

[All counsel listed on signature page]

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

KONINKLIJKE PHILIPS N.V.,
U.S. PHILIPS CORPORATION,
Plaintiffs,

v.

ACER INC.,
ACER AMERICA CORPORATION,
Defendants.

MICROSOFT CORPORATION,
Intervenor-Plaintiff,

v.

KONINKLIJKE PHILIPS N.V. and
U.S. PHILIPS CORPORATION,
Intervenor-Defendants.

Case No. 4:18-cv-1885-HSG

JURY TRIAL DEMANDED

**DEFENDANTS' OPPOSITION TO
PHILIPS' ADMINISTRATIVE MOTION
TO FILE UNDER SEAL**

Case Nos. 18-cv-1885-HSG through 18-cv-1890-HSG

DEFENDANTS' OPPOSITION TO PHILIPS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL

KONINKLIJKE PHILIPS N.V.,
U.S. PHILIPS CORPORATION,
Intervenor-Defendants/
Counterclaim Plaintiffs-
in-intervention

v.

MICROSOFT CORPORATION,
Intervenor-Plaintiff/
Counterclaim Defendant-
in-intervention

AND

MICROSOFT MOBILE INC.,
Counterclaim Defendant-
in-intervention.

KONINKLIJKE PHILIPS N.V.,
U.S. PHILIPS CORPORATION,
Plaintiffs,

v.

ASUSTEK COMPUTER, INC., and
ASUS COMPUTER INTERNATIONAL,
Defendants.

MICROSOFT CORPORATION,
Intervenor-Plaintiff,

v.

KONINKLIJKE PHILIPS N.V. and
U.S. PHILIPS CORPORATION,
Intervenor-Defendants.

Related Case No. 4:18-cv-1886-HSG

JURY TRIAL DEMANDED

KONINKLIJKE PHILIPS N.V.,
U.S. PHILIPS CORPORATION,
Intervenor-Defendants/
Counterclaim Plaintiffs-
in-intervention

v.

MICROSOFT CORPORATION,
Intervenor-Plaintiff/
Counterclaim Defendant-
in-intervention

AND

MICROSOFT MOBILE INC.,
Counterclaim Defendant-
in-intervention.

KONINKLIJKE PHILIPS N.V.,
U.S. PHILIPS CORPORATION,
Plaintiffs,

v.

HTC CORP., and
HTC AMERICA, INC.
Defendants.

KONINKLIJKE PHILIPS N.V.,
U.S. PHILIPS CORPORATION,
Plaintiffs,

v.

VISUAL LAND, INC.
Defendant.

Related Case No. 4:18-cv-1887-HSG

JURY TRIAL DEMANDED

Related Case No. 4:18-cv-1888-HSG

JURY TRIAL DEMANDED

Case Nos. 18-cv-1885-HSG through 18-cv-1890-HSG

DEFENDANTS' OPPOSITION TO PHILIPS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL

MICROSOFT CORPORATION,
Intervenor-Plaintiff,

v.

KONINKLIJKE PHILIPS N.V. and
U.S. PHILIPS CORPORATION,
Intervenor-Defendants.

KONINKLIJKE PHILIPS N.V.,
U.S. PHILIPS CORPORATION,
Intervenor-Defendants/
Counterclaim Plaintiffs-
in-intervention

v.

MICROSOFT CORPORATION,
Intervenor-Plaintiff/
Counterclaim Defendant-
in-intervention

AND

MICROSOFT MOBILE INC.,
Counterclaim Defendant-
in-intervention.

KONINKLIJKE PHILIPS N.V.,
U.S. PHILIPS CORPORATION,
Plaintiffs,

v.

YIFANG USA, INC. D/B/A/ E-FUN, INC.
Defendant.

Related Case 4:18-cv-1890-HSG

JURY TRIAL DEMANDED

MICROSOFT CORPORATION,
Intervenor-Plaintiff,

v.

KONINKLIJKE PHILIPS N.V. and
U.S. PHILIPS CORPORATION,
Intervenor-Defendants.

KONINKLIJKE PHILIPS N.V.,
U.S. PHILIPS CORPORATION,
Intervenor-Defendants/
Counterclaim Plaintiffs-
in-intervention

v.

MICROSOFT CORPORATION,
Intervenor-Plaintiff/
Counterclaim Defendant-
in-intervention

AND

MICROSOFT MOBILE INC.,
Counterclaim Defendant-
in-intervention.

Defendants Acer, Inc., Acer America Corporation, ASUSTeK Computer, Inc., ASUS Computer International, HTC Corporation, HTC America, Inc., Visual Land, Inc., and YiFang USA, Inc. d/b/a E-Fun, Inc. oppose Philips' Motion to File Under Seal its Motion to Consolidate, Docket No. 440.

On July 17, 2018, Plaintiffs Koninklijke Philips N.V. and U.S. Philips Corporation (collectively, "Philips") moved to seal in their entirety both its motion to consolidate matters for trial (Dkt. No. 442 in Case No. 4:18-cv-01885, "Motion to Consolidate") and numerous exhibits attached thereto. Dkt. No. 440, ("Motion to Seal"). Philips' attempt to seal its entire Motion to Consolidate is a clear violation of Civil Local Rule 79-5(b) that not only interferes with the public's access to content that they are entitled to see, but also prejudiced the defendants, which could not review any portion of Philips' motion in-house without first securing the consent of each party Philips named as providing confidential information. The Court should deny Philips' attempt to seal its entire Motion to Consolidate, and Philips should be ordered to file a redacted, public copy of that document on the docket that complies with the Civil Local Rules by redacting only sealable information.

Civil Local Rule 79-5(b) requires that any request to seal "must be narrowly tailored to seek sealing *only of sealable material*." (Emphasis added.) By the plain language of this rule, a request to seal an entire document is "narrowly tailored," and the whole document can be sealed, only if the entire document is "sealable material." Accordingly, this Court has routinely invoked this rule to deny attempts to seal entire documents when those documents contained both sealable and non-sealable content. See, e.g., *Finjan, Inc. v. Symantec, Corp.*, No. 14-cv-02998-HSG, 2017 WL 6610081 at *2 (N.D. Cal. Sept. 29, 2017) (request to seal entire document not narrowly tailored); *Finjan, Inc. v. Proofpoint, Inc.*, No. 13-cv-05808-HSG, 2015 WL 12977038 at *2 (N.D. Cal. Dec. 4, 2015) (request to seal entire exhibits containing sealable source code as well as publicly available information not narrowly tailored); *TVIIIM, LLC v. McAfee, Inc.*, No. 13-cv-04545-HSG, 2015 WL 3776424 at *3 (N.D. Cal. June 16, 2015) (proposed redaction of entire document containing financial information not narrowly tailored); *Bd. of Trustees of Ken Lusby Clerks & Lumber Handlers Pension Fund v. Piedmont Lumber & Mill Co.*, No. 13-CV-03898-HSG, 2015 WL 13025766 at *3 (N.D. Cal. Apr. 2, 2015) (same).

Philips' request to seal the entirety of its Motion to Consolidate is likewise not narrowly tailored and should be denied. Philips' averment that "throughout Philips' motion, Philips extensively quotes,

1 summaries, discusses, or otherwise relies on” confidential exhibits is an overstatement. Dkt. No. 440-1¶ 4.
 2 A confidential exhibit is not even referenced until the ninth page of the motion. Much of the
 3 motion has nothing to do with anything confidential, but instead describes the patents-in-suit, sets forth
 4 Philips’ proposal for trial staging, and makes legal arguments in support of that proposal. In other words,
 5 extensive passages in Philips’ Motion to Consolidate are entirely free of confidential information, but Philips
 6 nonetheless seeks to seal them all. The request to seal is not tailored at all, let alone *narrowly* tailored.

7 This flaw is no mere technicality. Granting Philips’ motion would deprive the public of their “right to
 8 inspect and copy public records and documents, including judicial records and documents.” *Pintos v. Pac.*
 9 *Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quotation omitted). Defendants, too, share that right and
 10 have been significantly inconvenienced by Philips’ overbroad sealing request, particularly given that the
 11 sealed material comes from a variety of parties and has been designated outside-counsel-only, interfering
 12 with the ability of outside counsel to share Philips’ brief with their own clients. This is not how sealing
 13 confidential material is supposed to work under this Court’s Civil Local Rules.

14 In sum, because Philips seeks to seal vastly more than is permissible under Rule 79-5(b), and because
 15 Philips disregards defendants’ and the public’s right to view the non-sealable content, Philips’ Motion to Seal
 16 its Motion to Consolidate should be denied, and Philips should be ordered to comply with the Local Rules by
 17 seeking to seal only “those *specific* portions . . . that contain sealable information.” *TVIIM, Inc. v. McAfee*,

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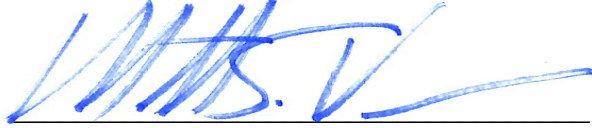
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Inc., No. 13-cv-04545-HSG, at *3 (N.D. Cal. June 10, 2015); *see also* Civil L.R. 79-5(d)(1)(C) (requiring administrative motion to seal be accompanied by “redacted version of the document that is sought to be filed under seal.”).

Date: July 23, 2018

Respectfully submitted,



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CIVIL LOCAL RULE 5-1 ATTESTATION

Under Local Rule 5-1, the foregoing counsel have authorized me, Matthew S. Warren, to execute on their behalf this Opposition to Philips' Administrative Motion to File under Seal, and that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature within this e-filed document.

Date: July 23, 2018



Matthew S. Warren